

Exhibit “A”

AO 440 (Rev., 8/01) Summons in a Civil Action

United States District Court

Western District of Pennsylvania

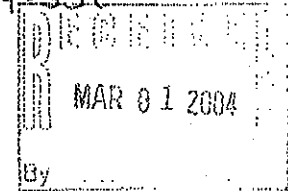
Thomas E. Mertz,
Plaintiff

v.

Donzi Marine, Inc. and American
Marine Holdings, Inc., in its own
right and d/b/a Donzi Marine,
Defendants

SUMMONS IN A CIVIL CASE

CASE NO.: 04-556



TO: American Marine Holdings, Inc.
1201 Hays Street, Suite 105
Tallahassee, Florida 32301

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY
(name and address):

James E. Spoden, Esquire
Eric J. Purchase, Esquire
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

R.V. Barth, Jr.
CLERK

DATE

2-23-04

Monica M. Keeney
(By) DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

THOMAS E. MERTZ,
Plaintiff

v.

DONZI MARINE, INC. and AMERICAN
MARINE HOLDINGS, INC., in its own
right and d/b/a DONZI MARINE
Defendants

) CIVIL ACTION

)

)

) NO. 2003 - _____

)

)

) JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Thomas E. Mertz, by his attorneys, MacDonald, Illig, Jones & Britton LLP, files this Complaint against defendants Donzi Marine, Inc. and American Marine Holdings Inc., stating as follows:

THE PARTIES

1. Plaintiff Thomas E. Mertz, an individual, is a citizen of the Commonwealth of Pennsylvania, who resides at 5850 Ruhl Road, Fairview, Pennsylvania 16415.

2. Defendant Donzi Marine, Inc. (hereinafter "Donzi") is a corporation organized under the laws of the State of Delaware with its principal place of business at 7110 21st Street East, Sarasota, Florida 34243. It is believed that Donzi is a wholly owned subsidiary of American Marine Holdings, Inc.

3. Defendant American Marine Holdings, Inc. (hereinafter "AMH") is a corporation organized under the laws of Delaware with its principle place of business at 1201 Hays Street, Suite 105, Tallahassee, Florida 32301. It is believed that at all times relevant to this dispute AMH exclusively controlled and/or conducted business as Donzi Marine.

EXHIBIT A

EXHIBIT B

JURISDICTION

4. Jurisdiction in this case is based on diversity of citizenship of the parties and the amount in controversy, which exceeds \$75,000.00, exclusive of interest and costs.

5. Jurisdiction is also based on the existence of a federal question. This action arises under the Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §§ 2301-2312, as is shown more fully in this Complaint.

FACTUAL ALLEGATIONS

6. On May 8, 2002, plaintiff purchased a motorboat, a Donzi 38ZX Daytona, from The Boat Store located at 10170 West Main Road, North East, Pennsylvania.

7. According to the Purchase Agreement, a copy of which is attached hereto as Exhibit A, the purchase price for the boat, including optional equipment and accessories, was \$322,255.00.

8. Defendant Donzi manufactured the boat.

9. Prior to purchasing the boat, plaintiff received advertising brochures from Donzi, which indicated that the 38ZX was "[c]apable of speeds in excess of 90 miles per hour" or "100 miles per hour (with optional power)." In addition, the brochures advertised that the headroom in the cabin portion of the 38ZX was six feet, three inches. Copies of these brochures are attached hereto as Exhibit B.

10. Plaintiff, in purchasing the boat, reasonably relied on the affirmations contained in the advertising brochures.

11. After delivery of the boat, plaintiff discovered that, even with "optional power," the boat could not exceed speeds of eighty (80) miles per hour and that the headroom in the cabin portion of the boat was only five feet, eleven inches.

12. Plaintiff also discovered numerous other defects in the boat, which included:

- a) a bulge in the boat's sidewall due to the installation of an oversized firewall panel;
- b) a fuel leak emanating from the gasoline tank air vent;
- c) a damaged port outdrive;
- d) inappropriately sized propellers;
- e) discoloration of the seats caused by contact with the mooring cover;
- f) stains on the carpet; and
- g) scratches on the table and counter tops.

These defects are described more fully in the December 12, 2003 correspondence from plaintiff's counsel to Donzi, with all attachments, copies of which are attached hereto as Exhibit C:

13. Plaintiff has made several requests to Donzi to repair the above defects, all of which have been unsuccessful.

14. In the course of investigating his claim, plaintiff learned from Kathy Mueller, Donzi's Director of Customer Service, that his boat was covered under the "Z-Care" warranty package. (See November 4, 2002 correspondence from Kathy Mueller to plaintiff attached hereto as part of Exhibit C). Despite numerous requests, plaintiff has yet to receive a copy of the "Z-Care" warranty manual.

15. Plaintiff subsequently learned from Marine Innovations Warranty Corp., the administrator of the "Z-Care" warranty program, that "American Holdings d/b/a Donzi Marine"

never paid for the warranty coverage on his boat. (See January 19, 2004 correspondence from Marine Innovations Warranty Corp. to plaintiff attached hereto as Exhibit D).

16. As a result of the defects described in paragraphs 8 through 11, plaintiff has sustained damages in excess of \$75,000.00, representing the difference in the purchase price of the boat and its fair market value as delivered.

COUNT I - BREACH OF WARRANTY

17. Plaintiff incorporates by reference all of the averments set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. Defendant Donzi expressly and/or impliedly warranted that the boat was merchantable and fit for a particular purpose.

19. Donzi breached said warranties by failing, within a reasonable time, to make any effort to cure the defects described in Paragraphs 8 through 11.

WHEREFORE plaintiff demands judgment against defendants for a sum exceeding \$75,000.00, with interest and costs.

COUNT II - VIOLATIONS OF PENNSYLVANIA'S UNFAIR
TRADE PRACTICES AND CONSUMER PROTECTION LAW

20. Plaintiff incorporates by reference all of the averments set forth in Paragraphs 1 through 19 as if fully set forth herein.

Exhibit A

Exhibit B

Exhibit C

Exhibit D

21. Defendant Donzi, as a result of the conduct described above, has committed violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTCPL"), 73 P.S. §§ 201-1-209-6. Specifically, Donzi has violated the following subsections of 73 P.S. § 201-2(4):

(v) Representing that goods or services have . . . characteristics, ingredients, uses, benefits or quantities that they do not have . . . ;

....

(vii) Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model, if they are of another;

....

(ix) Advertising goods or services with intent not to sell them as advertised;

....

(xiv) Failing to comply with terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods has been made.

....

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.

22. 73 P.S. § 201-9.2 authorizes this Court to award up to three times plaintiff's actual damages.

WHEREFORE plaintiff demands judgment against defendants for a sum exceeding \$75,000.00, with interest and costs.

COUNT III - VIOLATIONS OF THE MAGNUSON-MOSS
WARRANTY IMPROVEMENT ACT

23. Plaintiff incorporates by reference all of the averments set forth in Paragraphs 1 through 22 as if fully set forth herein.

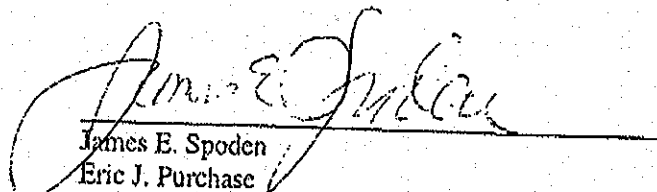
24. Defendant Donzi, as a result of the conduct described above, has committed violations of the Magnuson-Moss Warranty Improvement Act ("MMWA"), 15 U.S.C. §§ 2301-2312. Specifically, Donzi has failed to comply with its obligations under a written warranty, implied warranty or service contract in violation of 15 U.S.C. § 2310(d)(1).

25. 15 U.S.C. § 2310(d)(2) authorizes this Court to award plaintiff's reasonable attorneys' fees.

WHEREFORE plaintiff demands judgment against defendants for a sum exceeding \$75,000.00, with interest, costs and reasonable attorney's fees.

A JURY TRIAL IS DEMANDED AS TO ALL ISSUES.

Respectfully submitted,


James E. Spoden
Eric J. Purchase
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7710

Attorneys for Plaintiff
Thomas E. Mertz

40927
102.25

The Boat Store
10170 W. Main Rd.
Northridge, CA 91324
818-725-6999

MARINE PURCHASE AGREEMENT

SUBJECT TO THE TERMS AND CONDITIONS STATED ON BOTH SIDES OF THIS AGREEMENT.
SELLER AGREES TO SELL AND THE BUYER AGREES TO BUY THE FOLLOWING DESCRIBED PROPERTY.

DATE OF SALE: 5/14/02
BUYER: 314-474-1579
SELLER: 818-725-6999

BOAT MAKE: 2550 BRILL RD
BOAT MODEL: 382X DAYTECH
BOAT YEAR: 1993
BOAT HULL NO: 575 551 -
BOAT ENGINE: 575 551 -
BOAT COLOR: 575 551 -

OPTIONAL EQUIPMENT/ACCESSORIES

OPTIONAL EQUIPMENT/ACCESSORIES	AMOUNT
ANCHOR & ROPE	\$520.00
COARDED LIFELINE	150.00
WATER DIGITAL	300.00
LEADLINE & PULLEY	212.00
DEPTH FINDER DIGITAL	307.00
ELECTRONIC ECHO	1778.00
ENGINE DAYTECH	212.00
1600 CLUTCH UCV	121.00
HAIR PUMP & W/ WINDOWN	
TRANS. & FLUORATOR & PUMP	1723.00
HAIR 14 VRS	200.00
TRANSMISSION SHOWER	157.00
FLUORATOR & PUMP	1301.00
WHEEL LOCKER	807.00
1600 VRS	300.00
FLUOR 14 VRS (2000)	1390.00
1600 STORM (GARAGE)	5800.00
TOTAL OPTIONAL EQUIPMENT/ACCESSORIES	\$22870.00

TOTAL PURCHASE ABOVE: \$338,215.00
OPTIONAL EQUIPMENT/ACCESSORIES: 23,771.00
SALES TAX (if applicable):
DEALER PREP:
LABOR / INSTALL:
DEL AND/OR LAUNCHING:
FREIGHT:
SUB-TOTAL: \$361,986.00
TOTAL TRADE-IN ALLOWANCE: \$2,000.00
LESS BALANCE DUE ON ABOVE: 7
NET ALLOWANCE: 310,000.00
NET SALE: \$41,786.00
SALES TAX (if not included above):
TITLE - REGISTRATION - OFFICE FEES:
CASH SALE PRICE: \$56,100.00
LESS TOTAL PAYMENTS: 15,000.00
UNPAID BALANCE OF CASH SALE PRICE: \$41,100.00

TRADE-IN CREDIT TO BE PAID BY: ☐ DEALER ☒ CUSTOMER

TITLE TO THE ABOVE DESCRIBED EQUIPMENT SHALL BE TRANSFERRED TO BUYER WHEN BUYER HAS MADE PAYMENT IN FULL FOR THE EQUIPMENT.

THE PARTIES TO THIS AGREEMENT ARE AWARE THAT THE TRADE-IN ALLOWANCE OR THE PURCHASE PRICE SHOWN ABOVE MAY REQUIRE ADJUSTMENTS PURSUANT TO THE PROVISIONS OF PARAGRAPHS 5, 6, 7, AND 11 OF THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS DOCUMENT.

Buyer certifies that he/she has read the Terms and Conditions on the back of this document and agrees that they shall be incorporated as part of this Agreement.

Buyer certifies the following: 1) he/she is of legal age to enter into this Agreement; 2) the above described equipment and insurance (if applicable) have been purchased voluntarily; 3) the trade-in is free from all liens and encumbrances other than those listed herein.

Buyer agrees that all provisions to this Agreement including the Terms and Conditions on the reverse side hereof are severable. If any provision is held to be invalid, it shall not affect the other provisions, which shall be given full force and effect.

I, OR WE, HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS ORDER AND THAT I, OR WE HAVE READ THE BACK OF THIS AGREEMENT.

I, OR WE, ALSO AGREE THAT THE BALANCE WILL BE PAID BY ☐ CASH, ☐ BANK DRAFT, ☐ CERTIFIED CHECK, OR BY THE EXECUTION OF A RETAIL INSTALLMENT CONTRACT, OR A SECURITY AGREEMENT AND ITS ACCEPTANCE BY A FINANCING AGENCY.

BUYER: _____
DEALER: _____

APPROVED: _____
APPROVED: _____

returning boats in the world. Beyond Performance. Speed Boating Re-defined.

These are just some of the tag lines used to describe the boats of Donzi. And the ZX line personifies every one of those powerful statements.

The 45 ZX, 38 ZX and 33 ZX are the ultimate power trip. These big boys are big on speed, big on performance and big on luxury. Capable of speeds in excess of 100 miles per hour (with optional power), the ZX line is not for the timid.

These award-winning models offer features like no other. From the deep interior treeboard, composite hull and deck construction, vacuum bagged hulls and transoms, custom hardware, Z-tech ventilated stepped hull, oversized cabin, and much more, these boats defy the law of physics.

For more information on ZX and Daytona models, log onto to donzmarine.com and experience the ride of your life.



03/01/2004 MON 14:53 FAX 941 739 9609 CUSTOMER SERVICE

0012/034

Steve Herb

Exhibit C

Exhibit D

Optional hatch and seating

LOA: 45'0" • Beam: 9'3"
 Draft Down: 47" • Deadrise: 24°
 Max Fuel: 409 Gal. • Weight (appr): 14,000 Lbs.
 Max HP: 2,550 • Headroom: 6'3" • Freshwater: 40 Gal.
 Holding Tank: 10 Gal. • Sleeping Cap.: 2

Daytona Package

Available on 45, 38 & 33 ZX models

- Reinforced Rear Seats - Custom
- Extension Boxes
- Laminated - Kevlar E-Glass w/Carbon Fiber
- Props - H Performance
- Steering - Full External Hydraulic
- Stereo - Ultimate Sony AM/FM CD w/11 Speakers, 10 Disc CD Changer, (2) 75 watt Amplifiers w/Remote

LOA: 37'9" • Beam: 9'3"
 Draft Down: 40" • Deadrise: 22°
 Max Fuel: 232 Gal. • Weight (appr): 11,500 Lbs.
 Max HP: 1,100 • Headroom: 6'3"
 Freshwater: 32 Gal.
 Holding Tank: 10 Gal. • Sleeping Cap.: 2

Powerboat Magazine's 1999 Outstanding Offshore Workmanship
 Powerboat Magazine's 2000 Offshore Boat of the Year

LOA: 32'6" • Beam: 9'3"
 Draft Down: 40" • Deadrise: 22°
 Max Fuel: 174 Gal. • Weight (appr): 9,200 Lbs.
 Max HP: 1,100 • Headroom: 5'9" • Freshwater: 20 Gal.
 Holding Tank: 10 Gal. • Sleeping Cap.: 2

able to run the Autobahn alongside

Major Standard Features

- Z-Care 5-Year/Unlimited Warranty
- Battery Package - Dual
- Bolster Seats - Electric
- Bow and Stern Eyes - Stainless Steel
- Cabin Accent Lighting
- Cabin Carpet - 40 oz. Marine Grade
- Cleats - Stainless Steel Spring Line (Pop-Up)
- Cockpit Cover
- Compass - High Speed
- Dash - Custom w/ Full Gating
- Instrumentation and Color Matched Bezels
- Enclosed Head w/ Shower, Vanity and Port-a-Potti
- Engine Hatch - Electric, Mirrored
- Engine Room Lighting
- Foot Rests - Electric, Adjustable (Port & Starboard)
- Galley, Stainless Steel Sink, Refrigerator and Storage
- Horn - Recessed and Electric
- K-Planes
- Navigational Lights - Bow and Stern
- Stereo - Premium Sony AM/FM CD w/ 8 Speakers and Remote
- Swim Ladder - Recessed
- Vacuum Bagged Construction
- Vinyl - Heavy Duty, Stain-Resistant, UV Protected
- Z-Tech Composite Hull Construction
- Z-Tech Ventilated Step Hull

Presenting the ultimate power trip: the Donzi 38 ZX. Capable of speeds in excess of 90 mph, the 38 ZX is not for the timid. Turn the keys. Feel up to 1,200 horses thunder to life. Ease the throttles forward. The stainless steel, counter-rotating props churn in tandem with your adrenaline.

And as you propel the 38 ZX to eye watering speeds, you experience what prompted one boating writer to proclaim, "the meek may inherit the earth, but they will never know pleasures like this."



The 38 ZX won Powerboat Magazine's 1999 Outstanding Offshore Workmanship Award.

